

reversioner sued the assignor for rent and taxes under the lease, and recovered a judgment against him, which he paid. The latter then brought his action, apparently founded in *tort*, to recover this amount so paid by him from the assignee, with costs, &c. But it was held that, as by the law in force at the time of the assignment, (1856, ch. 154, see now the Code, Art. 24, sec. 19; 1867, ch. 158,) ²⁸ a deed not acknowledged and recorded passed no title even between the parties, the legal estate in the term did not vest in the assignee, ²⁹ and it not appearing that the deed had been subsequently registered before action brought, he was not liable on the covenants in the lease. One of the causes of action stated in the declaration (on the ambiguity of which the Court observed,) was the failure of the defendant to have the deed registered. The Court, however, said that there was no obligation upon him to register the assignment that could be enforced in a court of law; that it was optional with him to register it or not, as the consequences of the omission would fall upon himself; if the plaintiff had an interest in having the deed recorded, he might have taken a covenant from the defendant to place it on record, but in the absence of such a covenant no right of action accrued to him on account of the omission of the defendant in that respect. Now, in cases of a suit by the lessor against the original lessee after assignment, on the privity of contract, for breaches committed in the time of the assignee, the lessee may maintain an action over upon the case, founded in *tort*, against the assignee for having neglected to perform *the covenants during the **350** time he continued assignee, whereby the lessee sustained damage, Burnett

²⁸ Code 1911, Art. 21, sec. 19.

²⁹ **Liability of assignee of term.**—In *Nickel v. Brown*, 75 Md. 172, 185, affirming *Lester v. Hardesty supra*, it was held that the liability of the assignee continued until his legal title to the term had been divested by a deed duly executed, acknowledged and recorded, the court saying: "There can be no *hiatus* in the tenancy; there can be no abeyance in the legal title to the leasehold. The requirement of the lease is that throughout the whole period of its existence there shall be some one to fulfill the obligations of the tenancy." This case was not expressly overruled in *Baltimore v. Peat*, 93 Md. 696, but it is certainly difficult to reconcile them. In the latter case plaintiff was original lessee and covenanted to pay the rent reserved. Defendant became assignee of the term and in April 1897 her estate in the term was sold by decree of a court of equity. The sale was ratified and the purchaser went into possession but by mistake no deed was executed to the purchaser by the trustee until after suit brought. Plaintiff paid rent accruing after the sale and sued defendant for same. *Held*, defendant's title to the term was divested by the equity sale and the trustee's deed operated retrospectively to vest the legal title in the purchaser from the date of sale, and that the deed from the trustee, though executed after suit brought, was admissible in evidence.—Which is to say, that the plaintiff, who had a good case when he brought suit, found himself with a bad case at the trial, although he had done nothing in the meanwhile to change his position. Attention is called to the vigorous dissenting opinion of Judge Page.